



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

DEC 10 2003

Robert U. Pauley, Jr., Agent  
America Direct, Inc.  
2003 Graves Mill Road, Suite B  
Forest, VA 24551

RE: MUR 5396  
America Direct, Inc.

Dear Mr. Pauley:

On November 18, 2003, the Federal Election Commission found that there is reason to believe America Direct, Inc. violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

Robert U. Pauley, Jr., Agent

America Direct, Inc.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub  
Chair

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

Conciliation Agreement

1  
2 **FEDERAL ELECTION COMMISSION**  
3 **999 E Street, N.W.**  
4 **Washington, D.C. 20463**  
5

6 **FACTUAL AND LEGAL ANALYSIS**  
7

8 **RESPONDENTS:** America Direct, Inc.

**MUR: 5396**

9  
10 **I. INTRODUCTION**

11 This matter was generated based on information ascertained by the Federal Election  
12 Commission ("the Commission") in the normal course of carrying out its supervisory  
13 responsibilities. *See* 2 U.S.C. § 437g(a)(2).

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 There is reason to believe that America Direct, Inc. ("America Direct"), a direct mail  
16 vendor, made prohibited contributions to Bauer for President 2000, Inc. ("Committee") in the  
17 form of extensions of credit. America Direct provided direct mail services to the Committee for  
18 which it was not fully paid in a timely manner. Thus, the Commission finds reason to believe  
19 that America Direct made prohibited contributions to the Committee.

20 The extension of credit by any person is a contribution unless it is extended in the  
21 ordinary course of business and the terms are substantially similar to extensions of credit to  
22 nonpolitical debtors of similar risk and size of obligation. 11 C.F.R. § 100.7(a)(4). If a creditor  
23 fails to make a commercially reasonable attempt to collect the debt, a contribution will result.  
24 *Id.*; *see* 11 C.F.R. § 116.3 and 116.4. Although corporate contributions are prohibited, 2 U.S.C.  
25 § 441b(a) and (b), an extension of credit by an incorporated commercial vendor to a candidate or  
26 political committee will not be considered a contribution provided the terms are substantially  
27 similar to its extensions of credit to nonpolitical debtors that are of similar risk and size of  
28 obligation, and the credit is extended in the ordinary course of the commercial vendor's business.  
29 11 C.F.R. § 116.3(a) and (b), *see* § 116.1. To determine if credit was extended in the ordinary

1 course of the commercial vendor's business, the Commission will consider: 1) whether the  
2 commercial vendor followed its established procedures and its past practice in approving the  
3 extension of credit; 2) whether the commercial vendor received prompt payment in full if it  
4 previously extended credit to the same candidate or political committee; and 3) whether the  
5 extension of credit conformed to the usual and normal practice in the commercial vendor's trade  
6 or industry. 11 C.F.R. § 116.3(c).

7 America Direct served as a direct mail vendor for the Committee. The Committee  
8 received invoices from America Direct for the services it provided. The invoices noted that the  
9 Committee's payments were "due on receipt" or "net 30." Eight invoices remained outstanding  
10 for an excessive period. Five invoices totaling \$108,071, dated between February 17, 1999 and  
11 April 1, 1999, were paid by a single check on July 27, 1999. Prior to payment, the invoices were  
12 outstanding for 117 to 160 days. Two invoices in the amounts of \$62,579 and \$31,328 were  
13 dated December 6, 1999. The Committee paid the first invoice (\$62,579) in two installments: a  
14 payment of \$33,000 on May 31, 2000, 177 days subsequent to the date of the invoice, and a  
15 payment of \$29,579 on July 24, 2000, 231 days after the date of the invoice. The second invoice  
16 (\$31,328) was paid on April 19, 2000, 135 days after the date of the invoice. The final invoice  
17 (\$57,884) was dated December 28, 1999 and was paid on June 30, 2000, 185 days after the date  
18 of the invoice.

19 There is no available evidence that America Direct sent follow-up invoices or made  
20 additional attempts to collect the amounts due. The Committee reported the amounts due as  
21 debts. The Committee's July 2003 Quarterly Report discloses a debt of \$35,889.42 owed to  
22 America Direct, which may reflect a subsequent extension of credit to the Committee.

1           There is reason to believe that the extension of credit by America Direct was a prohibited  
2 corporate contribution. 2 U.S.C. § 441b. There is no evidence that America Direct's extension  
3 of credit to the Committee was in the ordinary course of business, on terms that were  
4 substantially similar to its extension of credit to nonpolitical debtors of similar risk and size of  
5 obligation. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). There is no evidence that America Direct  
6 followed its established procedures and past practice or that the extension of credit conformed to  
7 the usual and normal practice in the direct mail industry. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). For  
8 example, there is no evidence of collection efforts by this vendor or information about its  
9 collection policies and practices, advance payment policies, or billing cycles for nonpolitical  
10 debtors. Further, it appears that America Direct may have continued to extend credit to the  
11 Committee despite not receiving prompt payment of prior extensions of credit. *Id.* Thus, there is  
12 reason to believe that America Direct, Inc.'s extension of credit to the Committee was not in the  
13 ordinary course of business.

14           Therefore, there is reason to believe that America Direct, Inc. made a prohibited  
15 contribution to the Committee in the amount of \$259,862 for the period the invoices remained  
16 outstanding in violation of 2 U.S.C. § 441b(a).

ES-04-10-1032